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**UNITED  
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International Tribunal for the Prosecution of  
Persons Responsible for Serious Violations of  
International Humanitarian Law Committed in  
the Territory of Former Yugoslavia since 1991

Case No. IT-01-42-T  
Date: 26 May 2004  
Original: English

**IN TRIAL CHAMBER II**

**Before:** Judge Kevin Parker, Presiding  
Judge Krister Thelin  
Judge Christine Van Den Wyngaert

**Registrar:** Mr. Hans Holthuis

**Decision of:** 26 May 2004

**PROSECUTOR**

v.

**PAVLE STRUGAR**

**DECISION ON MOTION FILED ON BEHALF OF MR. MIODRAG  
JOKIĆ FOR ACCESS TO CERTAIN CONFIDENTIAL PORTIONS  
OF THE TRIAL TRANSCRIPT IN THE CASE OF THE  
PROSECUTOR V. PAVLE STRUGAR**

**The Office of the Prosecutor:**

Ms. Susan Somers  
Mr. Philip Weiner

**Counsel for the Accused:**

Mr. Goran Rodić  
Mr. Vladimir Petrović



**THIS TRIAL CHAMBER** of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

**NOTING** the “Motion Filed on Behalf of Mr. Miodrag Jokić for Access to Certain Confidential Portions of the Trial Transcript in the Case of the Prosecutor v. Pavle Strugar”, filed on 21 May 2004 (“Motion”), in which defence counsel for Miodrag Jokić (“Defence”) requests access to the confidential portions of the transcript of his testimony as identified in the Motion, for use in the appellate sentencing proceedings against him as evidence of his cooperation with the Office of the Prosecutor (“Prosecution”);

**NOTING** the Prosecution’s response to the Motion, dated 25 May 2004, whereby the Prosecution indicated that it has no objection to the release of the materials sought on the condition that the same protective measures, including retention under seal of exhibits currently enjoying such status, remain in place;

**CONSIDERING** that while the Rules of Procedure and Evidence (“Rules”) do not explicitly deal with the procedure for granting access to documents under seal in a separate proceedings, there is an analogous procedure with respect to protective measures granted to witnesses pursuant to Rule 75 of the Rules, which requires that protective measures granted in one proceedings shall have effect in other proceedings and may be modified by the chamber seized of the first proceedings, or if no chamber remains seized of the first proceedings, by the chamber seized of the second proceedings;

**CONSIDERING** furthermore that according to the jurisprudence of the Appeals Chamber, “a party is always entitled to seek material from any source to assist in the preparation of its case if the material sought has been identified or described by its general nature and if a legitimate forensic purpose for such access has been shown”;<sup>1</sup>

**CONSIDERING** that in the present case, the Defence has indicated that it intended to offer the transcript of the testimony of Miodrag Jokić in the trial of Pavle Strugar in the sentencing appellate proceedings against Miodrag Jokić as evidence of his cooperation with the Prosecution in the context of the assessment of mitigating circumstances;

<sup>1</sup> *Prosecutor v. Tihomir Blaškić*, Decision on Appellants Dario Kordić and Mario Čerkez’s Request for Assistance of the Appeals Chamber in Gaining Access to Appellate Briefs and Non-public Post Appeal Pleadings and Hearing Transcripts Filed in the Prosecutor v. Blaškić, Case No. IT-95-14-A, 16 May 2002, para. 14. See also *Prosecutor v. Dario Kordić and Mario Čerkez*, Order on Paško Ljubičić’s Motion for Access to Confidential Supporting Material, Transcripts and Exhibits in the *Kordić and Čerkez* Case, IT-95-14/2-A, 19 July 2002, p. 4; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Decision on Joint Defence Motion by Enver Hadžihasanović and Amir Kubura for

**CONSIDERING** that the Trial Chamber is satisfied that the material sought has been properly identified and that the legitimate forensic purpose for the requested access has been shown by the Defence;

**PURSUANT** to Rules 54 and 75 of the Rules;

**HEREBY GRANTS** the Motion and **ORDERS** as follows:

1. the portions of Miodrag Jokić's testimony heard in private session shall be disclosed to the Defence, namely the transcripts dated 2 and 16 April 2004; and
2. this material shall remain confidential in the appellate proceedings against Miodrag Jokić until further order.

Done in English and French, the English version being authoritative.

Dated this twenty-sixth day of May 2004  
At The Hague  
The Netherlands



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Judge Kevin Parker  
Presiding

[Seal of the Tribunal]

